IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K. HEMA

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

RPFC. No. 226 of 2006

Against the order dated 15.09.2006 in MC.145/2004 of the Family Court, Ernakulam.

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PETITIONERS: PETITIONERS

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1. **SHERIN ACHAMMA THOMAS,**
   D/O. P.T. THOMAS, VALIYAVEETTIL,
   MUKKADA P.O., MANIMALA.

2. **APPU, AGED 2 YEARS, (MINOR),**
   REP. BY MOTHER IST PETITIONER.

BY ADV. SRI. LIJU. V. STEPHEN

RESPONDENT: RESPONDENT

SUNIL P. ELIYAS, S/O. ELIYAS MATHEW,
PAYYANIKKAL, THOMMANKUTHU P.O.,
KARIMANOOR, THODUPUZHA.

BY ADV. SRI. C.M. TOMY
SRI. MATHEW SKARIA

THIS REV. PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

R.P. (FC) NO. 226 OF 2006

Dated this the 26th day of February, 2007.

O R D E R

The first revision petitioner-wife filed an application under Section 125 of the Code of Criminal Procedure alleging that the respondent herein married her and a child (second petitioner) was born in the wedlock. The matrimonial life was happy in the beginning, but it allegedly became miserable due to the ill-treatment by respondent. He was a drunkard, who had no love and affection towards her and he treated her with cruelty. She was forced to leave his house for fear of death on 17.10.2002 and thereafter, she is residing with her parents. The respondent having sufficient means, neglected to maintain petitioners and he is willfully evading payment of maintenance. She claimed maintenance allowance at the rate of Rs. 3,000/- and Rs. 1,500/- to the first and second petitioner respectively from respondent.

2. The respondent filed a counter statement denying all the allegations including cruelty. At present he is not having sufficient income to pay monthly maintenance. The petitioner is a partner in a business firm having huge income to maintain herself. In such circumstances, he is not liable to maintain petitioner. To prove the case, the first petitioner examined herself as PW1.

3. The court below found that the revision petitioner did not prove cruelty. It was also held that first petitioner was residing separately for no justifiable reason and hence, not entitled for maintenance. It was also held that the husband offered to accept petitioner as well as child, even during trial. But, such offer was refused by the wife. These are the main reasons for rejecting the claim made by the wife.

4. Though arguments were raised regarding impropriety of the finding with respect to the alleged cruelty, on going through the records and the order under challenge, I find that the court below has not applied its mind to any of the factors which are to be considered before granting or rejecting monthly allowance for maintenance. A reading of Section 125(1) of the Code would show that in an application for maintenance under the said Section by the wife or child, court must be satisfied that husband/father having sufficient means has neglected or refused to maintain the wife or child, who are unable to maintain themselves. The sufficiency of means, the neglect or refusal to maintain and the inability of the wife or child to maintain herself or itself are the three inevitable factors which are to be established for getting an order of maintenance allowance under Section 125(1) of the Code. The trial court, as the fact-finding court, is bound to consider those factors, based on the pleadings, evidence and

other materials available in court. Without entering finding whether husband/father having sufficient means, neglected or refused to maintain the wife or child, as the case may be, who are unable to maintain themselves, no order shall be passed under Section 125(1) of the Code in an application filed by wife or child.

5. But, a plain reading of the order under challenge would show that none of the factors relevant under Section 125(1) of the Code were considered by the trial court. The trial court is the fact-finding court and it is bound to enter specific findings on these three relevant aspects, before granting or refusing maintenance. Since the revisional court cannot enter into any fact-finding for the first time in revision, it is the duty of the trial court to enter specific findings on the three factors which are referred above.

6. Needless to say, even in considering whether the child is entitled for maintenance, the trial court has to enter finding that the father having sufficient means has neglected or refused to maintain the child, who is unable to maintain itself. Such a finding is not there in the order of the court below.

7. The court below has not considered the rival contentions regarding the sufficiency of means of the husband/father, the alleged inability of wife or child to maintain herself or itself or even the alleged neglect or refusal to maintain the wife/child. It is also curious to note

that, though Section 125(1) of the Code specifically provides that the court may pass order under the subsection only if there is proof of neglect or refusal to maintain, there is absolutely no finding in the order whether there was any proof of neglect or refusal to maintain. Since the order is bereft of specific findings of fact on the three crucial aspects, namely, i) sufficiency of means of the husband/father ii) neglect or refusal to maintain the wife or the child and iii) the inability of the wife or child to maintain herself or itself, the order under challenge is clearly illegal. The order deserves to be set aside and I do so.

8. I am not expressing any view regarding the rival contentions raised in this revision on the question of cruelty, sufficiency of means etc., since the case has to be remanded for fresh consideration and disposal. The parties are at liberty to raise those contentions before court below.

9. However, learned counsel for the revision petitioner submitted that the order of maintenance passed in favour of the child may not be disturbed, especially since the respondent has not challenged the said order. In the peculiar facts and circumstances of this case, I find that respondent shall pay Rs. 600/- as monthly maintenance, which can be treated as an order of interim maintenance to be passed during pendency of the proceedings before the trial court.

The quantum of such maintenance however, will be subject to fresh decision of the trial court.

10. In the result, the order under challenge is set aside, but respondent shall pay monthly allowance to the child at the rate of Rs. 600/- as ordered by lower court as interim maintenance during pendency of the proceedings before the court below. The case is remanded to court below for fresh consideration and disposal in accordance with law.

It is made clear that the court shall enter specific findings regarding the three crucial aspects, which are essentially to be considered under Section 125(1) of the Code and such other matters which may be relevant for consideration, to grant or refuse the claim for maintenance.

Parties shall appear before the trial court on 19.03.2007. The trial court shall dispose of the matter before 19.04.2007.

This revision petition is allowed.

K. HEMA, JUDGE

smp